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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 860

WIESEN-HART, INC.,

Petitioner,

vs.

ADVISERS, INCORPORATED,

Respondent.

BRIEF IN OPPOSITION

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Questions Presented

Respondent is dissatisfied with Petitioner's "Questions Presented" and will therefore restate them.

The sole question raised by the decision of the District Court (reversed by the Court of Appeals) is:

(1) Will an innocent, immaterial variance between the actual date of publication of a book and the date of publication alleged in the certificate of copyright registration and the application therefor render the copyright unenforceable so said certificate of registration is incapable of supporting an action for copyright infringement?

The decision of the Court of Appeals raised the additional question:

(2) Is the practice of the Copyright Office permitting the issuance of new registrations to correct inadvertent innocent errors in original certificates of registration within the authority of the Register of Copyrights?

Statement

Both of the courts below found as a fact that publication of the copyrighted work occurred in August 1953 (Petitioner's appendix, p. 15 and R. 57a). Petitioner persists in advancing the argument (Petition p. 3, par. 3) in spite of the findings of fact by the courts below that publication occurred prior to that date. The argument is based upon either a reporting error or an inadvertent error of Mr. Tralins, President of respondent, in testifying at the trial. The error was demonstrated to both the courts below by the affidavit of Mr. Tralins (R. 50a-53a).

The later filed application for copyright (R. 4b-5b) and affidavit of Mr. Tralins (R. 6b-7b) were expressly for the purpose of correcting the earlier registration and followed the practice of the Copyright Office existing at that time for the correction of inadvertent errors. This practice was later incorporated in the regulations of the Copyright Office (Appendix I herein).

Argument

(1) The decision of the Court of Appeals below, that the question presented is governed by the decision of this court in *Washingtonian Co.* v. *Pearson,* 306 U. S. 30 (1939), is correct. The court there stated:

> "The Act of 1909 is a complete revision of the copyright laws, different from the earlier Acts both in scheme and language. It introduced many changes and was intended definitely to grant valuable, enforceable rights to authors, publishers, etc., without burdensome requirements; 'to afford greater encouragement to the production of literary works of lasting benefit to the world' " (p. 36).

Petitioner asserts conflict between the decision of the Court of Appeals below and decisions of other federal courts (Petition, p. 7). All of the cases cited were decided prior to the decision of this Court in the *Pearson* case, *supra*, except *Wrench* v. *Universal Pictures Co.*, 104 F. Supp. 374, 378 (S. D. N. Y. 1952) and *Heim* v. *Universal Pictures Co.*, 154 F. 2d 480, 490 (2 Cir. 1946).

Petitioner's reference to the *Heim* case, *supra*, is directed to language contained in the concurring opinion of Judge Clark. The majority of the court did not consider the question presented involved in their decision of that case.

Petitioner's reference to the *Wrench* case, *supra*, is directed to mere *dictum*.

The decision of the Court of Appeals below is correct and not in direct conflict with decisions of other federal courts.

(2) Petitioner asserts conflict between the decision of the Court of Appeals below and cases dealing with attempts of copyright proprietors to obtain two copyright registrations on the same work. These cases have no applicability. Respondent filed its second application in accordance with the practice of the Copyright Office in respect to *correcting* registrations and expressly stated therein that the application (R. 4b-5b) and affidavit filed in support thereof (R. 64a-65a) was for that purpose. This practice was subsequently put into regulation form (see Appendix I hereto). The regulations were issued pursuant to Title 17 U. S. C. § 207 which provides:

> "Rules For Registration Of Claims.—Subject to the approval of the Librarian of Congress, the Register of Copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this title."

It is submitted that the practice of amending certificates of registrations to avoid forfeitures of valuable rights in exceptional and meritorious cases is proper and a valid exercise of administrative authority.

The decision of the Court of Appeals below is correct on this question presented.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

STANTON T. LAWRENCE, JR.,
Attorney for Respondent.

APPENDIX I

Regulations of The Copyright Office

"§ 201. 5 AMENDMENTS TO COMPLETED COPYRIGHT OFFICE REGISTRATIONS AND OTHER RECORDS—(a) * * *.

"(b) *Correction by new registration.* In exceptional cases, where an applicant desires to correct, amend or amplify a registration previously made in accordance with information furnished by a claimant or his agent, a new application indicating its amendatory purpose shall be filed, accompanied by the statutory fee and the same number of copies required for a new application. Where it is satisfactorily established that copies of the original work cannot be obtained for submission, photostat or microfilm copies of the original may be submitted." (21 F. R. 6021)